

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MELODY A. SMITH**

Claimant

VS.

**SUGAR CREEK PACKING CO.**

Self-Insured Respondent

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Docket No. 1,057,323

**ORDER**

**STATEMENT OF THE CASE**

Claimant requested review of the February 18, 2013, Nunc Pro Tunc Award entered by Administrative Law Judge (ALJ) Brad E. Avery. The Board heard oral argument on June 4, 2013. Patrick C. Smith of Pittsburg, Kansas, appeared for claimant. Frederick J. Greenbaum of Kansas City, Kansas, appeared for self-insured respondent.

The parties have stipulated that claimant has a six percent functional impairment to the body as a whole. The ALJ found claimant did not prove more probably than not that future medical care is necessary as defined in K.S.A. 2011 Supp. 44-510h(e). Accordingly, the ALJ denied claimant's request for future medical care.

The Board has considered the record and adopted the stipulations listed in the Nunc Pro Tunc Award.

**ISSUES**

The claimant argues that the ALJ erred in his determination that she did not prove more likely than not that future medical treatment is necessary, and, therefore, claimant is entitled to future medical care.

Respondent contends the ALJ correctly found claimant failed to prove more likely than not she requires future medical treatment and correctly denied benefits.

The only issue for the Board's review is: Is claimant entitled to future medical care?

**FINDINGS OF FACT**

At the time of her accidental injury, claimant was employed by respondent as an inventory specialist. On July 7, 2011, claimant was told by a supervisor to put away rolls of microwave belting. The rolls of belting are approximately 4 feet long, 3.5 feet around, covered in plastic, and weigh approximately 65 pounds each. Claimant developed pain in her neck and back after unbanding the rolls from the pallets, carrying the rolls through a pair of double doors and up a flight of stairs to a landing. Claimant also alleges she injured her left shoulder as a result of the incident. Respondent disputes the left shoulder injury. Claimant is currently employed by respondent as a data engineer.

After the accident, respondent directed claimant to Cheryl Lemmon, a nurse practitioner, who referred her to Dr. Voss, a chiropractor. Claimant visited Dr. Voss several times before seeing Dr. Ciccarelli, an orthopedic surgeon. Dr. Ciccarelli ordered an MRI of claimant's lumbar spine, which revealed no diagnostic abnormality. Dr. Ciccarelli recommended physical therapy and anti-inflammatory medicines before referring claimant to Dr. Hendler.

Dr. Hendler, a board certified physician, initially examined claimant on September 26, 2011. Claimant followed up with Dr. Hendler on numerous occasions through July 10, 2012. During the July 2012 visit, claimant complained of pain to her left shoulder, but could not relate it to any specific event.

Dr. Hendler's impression was myofascial pain. He further testified claimant showed multiple signs of symptom magnification. Dr. Hendler opined it was more probable than not that no additional or future treatment is necessary in relation to claimant's workers compensation injury.

Dr. Prostic, a board certified orthopedic surgeon, examined claimant on March 16, 2012, at claimant's request. Dr. Prostic issued a report on March 16, 2012, with an additional supplemental report dated April 6, 2012.

After performing a physical examination, reviewing claimant's prior medical records and ordering x-rays of the left shoulder and lumbar spine, Dr. Prostic concluded claimant had sprains and strains of her spine and evidence of rotator cuff tendinopathy of her left shoulder. He stated it would be reasonable and probable claimant would require future treatment. Dr. Prostic recommended treatment of anti-inflammatory medicines by mouth, aerobic conditioning exercises, and rotator cuff strengthening exercises.

Claimant testified she sought treatment on her own with Dr. Gellender for her left shoulder. Claimant stated she visited Dr. Gellender two or three times and was prescribed pain medication for both her back and her left shoulder. Dr. Gellender's deposition was not taken by either party.

The parties stipulated that the nature and extent of claimant's disability is derived from a compromised functional impairment rating of six percent to the body as a whole and equates to an award for permanent partial disability of \$13,819.50.

#### **PRINCIPLES OF LAW**

K.S.A. 2011 Supp. 44-510h(e) states in part:

It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

#### **ANALYSIS**

The only issue in this appeal is whether claimant is entitled to future medical care. Dr. Hendler testified that claimant needed no additional treatment.<sup>1</sup> The only evidence in the record that suggests claimant is in need of any type of care is a notation by Dr. Prostic. In his report, Dr. Prostic recommends "anti-inflammatory medications by mouth, aerobic conditioning exercises, and rotator cuff strengthening exercises."<sup>2</sup> There is no indication regarding whether claimant requires prescription anti-inflammatory medication. There is no indication regarding whether exercises require a referral therapist.

Dr. Prostic's report was interpreted by the ALJ to mean over-the-counter anti-inflammatory medication and exercises that can be performed at home. The Board agrees. K.S.A. 2011 Supp. 44-510h(e) states that medical treatment does not include home exercise programs or over-the-counter medications. As such, the claimant is not entitled to an order for medical treatment.

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<sup>1</sup> Hendler Depo., p. 11.

<sup>2</sup> Prostic Depo., Ex. 2.

**CONCLUSION**

Based upon the foregoing, the Board finds that claimant is not entitled to an order for medical treatment.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Nunc Pro Tunc Award of Administrative Law Judge Brad E. Avery dated February 18, 2013, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2013.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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Brad E. Avery, Administrative Law Judge